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Appl. No. 10/654,228
Docket No. P127C
Amdt. Dated April 3, 2008
Reply to Office Action mailed on January 3, 2008
Customer No. 27752

REMARKSClaim Status

Claims 1 and 2 are pending in the present application. No additional claims fee is believed to be due. Claim 1 has been amended to incorporate the language of now canceled claim 2. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Double Patenting

Claims 1 and 2 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 3 of US Patent No. 6,641,836. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103 Over Hart in view of Halleck

Claims 1 and 2 have been rejected under 35 U.S.C. § 103 as being unpatentable over Hart (US Patent No. 6,133,317) in view of Halleck (US Patent No. 3,511,910). Applicants respectfully traverse this rejection.

Hart is directed to:

[a]n oxalic acid or oxalate composition and method of treatment of warm blooded animals including humans and pets is provided which includes at least one therapeutically effective form of oxalic acid or oxalate selected, for example, from oxalic acid in a free acid, ester, lactone or salt form, oxalates including sodium oxalate, a nutritional supplement containing oxalic acid or oxalate, oxalic acid dehydrate, anhydrous oxalic acid, oxamide, oxalate salts, natural or processed foods including molds, plants or vegetables containing oxalic acid or oxalate, beverages, liquids or juices containing oxalic or oxalate, additives containing oxalic acid or oxalate, and combinations thereof.

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Abstract. Halleck is directed to "an animal food product containing a polysaccharide consisting essentially of a polymeric chain of D-glucopyranose units, which is effective in reducing plasma cholesterol levels." *Abstract.* The combination of Hart and Halleck, however, fails to render the claims of the current application obvious.

Hart fails to teach a diet comprising, on a dry matter basis, about 20 to 40% by weight protein, about 40 to 30% by weight fat, and about 1 to 11% total dietary fiber. Additionally, as best understood by Applicants, Hart fails to provide guidance as to an amount of garlic to administer to a dog for enhancing immune response in that dog. Hart states that the "therapeutically effective form of oxalic acid or oxalate is any oxalic acid or oxalate which provides the beneficial effect and is selected, for example, from...natural or processed foods including molds, plants or vegetables such as parsley, chives, garlic, beets, carrots, spinach and the like containing at least one form of oxalic acid or oxalate..." Col. 5, lines 43 – 53. With respect to the citation referenced in the Office Action in which a dog is fed 1 lb carrots, ¼ cup parsley, 1 tsp garlic, 1 ½ lbs dry dog food, the resulting food composition contains three items which are listed by Hart as being sources of oxalic acid or oxalate, namely the carrots, parsley and garlic. As best understood by Applicants, Hart fails to teach which of those sources is providing a beneficial effect. Hart, therefore, fails to provide any teaching that the garlic is the beneficial ingredient within the diet composition or that the garlic is producing the desired beneficial effect. As Hart fails to teach that the garlic is the beneficial ingredient, Hart also fails to provide one of ordinary skill with any reasonable expectation of success in the use of garlic in a diet composition for enhancing immune response in a dog.

The Office Action is combining Halleck with Hart for the teaching of a commercial dry dog food constituting the basal ration of 23% crude protein, 4.5% crude fat and 6% crude fiber. Halleck, however, fails to overcome the shortcomings of Hart as Halleck fails to mention the use of garlic in a diet composition for a dog. As the combination of Hart and Halleck fails to teach each of the elements of the claims, Applicants respectfully request reconsideration and withdrawal of the rejection.

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Rejection Under 35 U.S.C. § 103 Over Allen in view of Hart and Halleck

Claims 1 and 2 have been rejected under 35 U.S.C. § 103 as unpatentable over Allen (US Patent No. 5,965,153) in view of Hart and Halleck. Applicants respectfully traverse this rejection.

Allen is directed to "[a] dietary supplement for animals, comprising safflower oil, sunflower oil, olive oil, soya oil, cod liver oil, lecithin, natural flavors, herbs, garlic, and zinc." *Abstract*. Allen, however, fails to teach each and every element of the claims. Allen, fails to teach a diet composition comprising, on a dry matter basis, about 20 to 40% by weight protein, about 4 to 30% by weight fat, and about 1 to 11% total dietary fiber. Furthermore, as Allen fails to disclose any examples or particular amounts of garlic that would be effective for preventing shedding, Allen also fails to provide any indication of what an effective amount of garlic would be for enhancing immune health. It is also not necessarily the case that by feeding any amount of garlic effective to reduce shedding one would intrinsically enhance the immune system. Allen, therefore, provides no expectation of success in the use of garlic, or the amount of garlic, for enhancing immune response.

The Office Action is combining Hall and Halleck with Allen for the additional teachings of the use of garlic in a diet composition and a diet composition comprising 23% crude protein, 4.5% crude fat, and 6 percent crude fiber. As noted above, Hall fails to provide any teaching that the use of garlic, in particular, provides any particular beneficial effect. As the combination of Allen, Hall and Halleck fails to teach the elements of the claims, Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103 Over Lewandowski in view of Hart and Halleck

Claims 1 and 2 have been rejected under 35 U.S.C. § 103 as unpatentable over Lewandowski (US Patent No. 5,976,549) in view of Hart and Halleck. Applicants respectfully traverse this rejection.

Lewandowski is directed to "[a]n oral hygienic compound and method for use in domesticated animals such as cats and dogs." *Abstract*. Lewandowski, however, fails to teach each and every element of the claims. Lewandowski fails to teach a diet

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composition comprising, on a dry matter basis, about 20 to 40% by weight protein, about 4 to 30% by weight fat, and about 1 to 11% total dietary fiber. Additionally, Lewandowski does not disclose any actual amounts of garlic and, therefore, one of ordinary skill can not tell or assume that an amount of garlic effective to reduce bad breath would be the same as the claimed amount of garlic to enhance immune response. Lewandowski, therefore, provides no reasonable expectation of success in the use of garlic, or the amount of garlic, for enhancing immune response.

The Office Action is combining Hall and Halleck with Lewandowski for the additional teachings of the use of garlic in a diet composition and a diet composition comprising 23% crude protein, 4.5% crude fat, and 6 percent crude fiber. As noted above, Hall fails to provide any teaching that the use of garlic, in particular, provides any particular beneficial effect. As the combination of Lewandowski, Hall and Halleck fails to teach the elements of the claims, Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Shields in view of Hart

Claims 1 and 2 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Shields, Jr. et al (US Patent No. 6,156,355) ("Shields") in view of Hart. Applicants respectfully traverse this rejection.

Shields is directed to:

[b]reed-specific dog food formulations that comprise chicken meat as the major ingredient, rice as the predominant (or sole) grain source, fruit and/or vegetable fiber as the primary or sole fiber source, unique fat and antioxidant blend, vitamins, herbs and spices, carotenoids, and no corn or artificial colors, preservatives, flavors or sugars are provided.

Abstract. Shields, however, fails to teach each element of the claims.

Shields does not provide any amounts or ranges of garlic in any of the disclosed compositions. There is no teaching of any particular amounts of garlic and no expectation of success for any particular amount of garlic. There is also no expectation of success for using garlic to enhance immune response as Shields provides only limited

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disclosure regarding garlic and its use for its antioxidant activity, cardiac benefits and inhibition of growth of pathogenic organisms.

The Office Action is combining Hall with Shields for the additional teachings of the use of garlic in a diet composition. As noted above, Hall fails to provide any teaching that the use of garlic, in particular, provides any particular beneficial effect. As the combination of Shields and Hall fails to teach the elements of the claims, Applicants respectfully request reconsideration and withdrawal of the rejection.

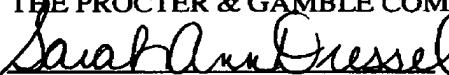
Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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